

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition: 45-001-02-1-5-00474
Petitioner: Josie Martinez, a/k/a Josie Reese
Respondent: Department of Local Government Finance
Parcel: 001-25-45-0259-0003
Assessment Year: 2002

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the DLGF) determined that the tax assessment for the subject property is \$126,900 and notified the Petitioner on March 31, 2004.
2. The Petitioner filed a Form 139L on April 14, 2004.
3. The Board issued a notice of hearing to the parties on September 9, 2004.
4. Special Master Peter Salvesson held the hearing in Crown Point on October 12, 2004.

Facts

5. The subject property is located at 929 Union Street in Gary.
6. The subject property is a single-family home on 0.139 acres of land.
7. The Special Master did not conduct an on-site visit of the property.
8. Assessed value of the subject property as determined by the DLGF is:
Land \$18,500 Improvements \$108,400.
9. Assessed value requested by the Petitioner on the Form 139L is:
Land \$14,800 Improvements \$108,400.
10. Persons sworn as witnesses at the hearing:
For Petitioner—Josie Martinez, Owner,
For Respondent—Larry Vales, Staff Appraiser, Cole-Layer-Trumble.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) Petitioner contends that other properties on the same street as the subject property received a 20 percent land value adjustment that was not made to the Petitioner's property. *Martinez Testimony; Petitioner Exhibit 1, 2, 4-8.*
 - b) Petitioner contends that the subject property should have a neighborhood factor of .80 for improvements on the subject property since neighboring properties were given .80 as a neighborhood factor. *Martinez Testimony; Petitioner Exhibits 1, 3, 9-11*

12. Summary of Respondent's contentions in support of assessment:
 - a) The properties with a 20 percent land adjustment are unimproved lots. The 20 percent adjustment is not proper for the subject property because it is improved. *Vales Testimony.*
 - b) Respondent affirms that the subject property has the wrong neighborhood factor and that the subject property should be in neighborhood 02514. *Vales Testimony.*

Record

13. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The tape recording of the hearing labeled Lake Co. 515,
 - c) Exhibits:
 - Petitioner Exhibit 1 – Letter from Petitioner,
 - Petitioner Exhibit 2 – Value Adjustments for Owner's Parcel,
 - Petitioner Exhibit 3 – Neighborhood Factor for Owner's Parcel,
 - Petitioner Exhibit 4 – Value Adjustment for Parcel 001-25-45-0259-0011,
 - Petitioner Exhibit 5 – Value Adjustment for Parcel 001-25-45-0259-0012,
 - Petitioner Exhibit 6 – Value Adjustment for Parcel 001-25-45-0259-0013,
 - Petitioner Exhibit 7 – Value Adjustment for Parcel 001-25-45-0259-0014,
 - Petitioner Exhibit 8 – Value Adjustment for Parcel 001-25-45-0259-0015,
 - Petitioner Exhibit 9 – Neighborhood Factor for Parcel 001-25-45-0259-0021,
 - Petitioner Exhibit 10 – Neighborhood Factor for Parcel 001-25-45-0248-0001,
 - Petitioner Exhibit 11 – Neighborhood Factor for Parcel 001-25-45-0247-0040,
 - Petitioner Exhibit 12 – Gary Map (Q-2205-A), NE ¼ Sec.33T.37N.R7W,
 - Respondent Exhibit 1 – Form 139L,
 - Respondent Exhibit 2 – Subject property record card,
 - Respondent Exhibit 3 – Subject photo,

Board Exhibit A – Form 139L,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet,

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. Petitioner proved that several other lots on Union Street were allowed a negative 20 percent adjustment identified as "code 7, traffic flow." The subject property and some of Petitioner's comparables are listed as being in neighborhood 2513, while two of the comparables are in neighborhood 2514. Although all these properties are located in close proximity, Petitioner failed to prove that they are comparable. Therefore, the fact that they were allowed a negative influence factor is not probative evidence to support Petitioner's claim. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005); *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Petitioner failed to make a prima facie case regarding the claim for a negative influence factor.
16. Alternatively, if there is sufficient evidence to support the Petitioner's contention regarding neighborhood factor, Respondent successfully rebutted that evidence. Respondent offered substantial evidence that the 20 percent influence factor for land is not for traffic flow, as the number "7" might indicate, but for vacant land. The subject parcel is improved, and therefore, the 20 percent factor for vacancy is not applicable.

17. The Respondent and Petitioner agreed that the subject property should be valued in neighborhood 02514 and have a neighborhood factor of 80 percent.

Conclusion

18. Petitioner established a prima facie case. Respondent agreed with the evidence concerning the neighborhood factor. The Board finds in favor of Petitioner. The subject property should be valued as being in neighborhood 02514.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.